

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CORPORAL B. KURT PRICE, et al.,	:	
	:	
Plaintiffs,	:	
	:	C.A. No. 04-956-GMS
v.	:	
	:	
COLONEL L. AARON CHAFFINCH, et al.,	:	
	:	
Defendants.	:	
<hr/>		
SERGEANT CHRISTOPHER FORAKER,	:	
	:	
Plaintiff,	:	
	:	C.A. No. 04-1207-GMS
v.	:	
	:	
COLONEL L. AARON CHAFFINCH, et al.,	:	
	:	
Defendants.	:	

**APPENDIX
TO ANSWERING BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SANCTIONS AND OTHER RELIEF**

Date: February 8, 2006

Noel C. Burnham (DE Bar No. 3483)
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Counsel for Defendants

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

B. KURT PRICE, et al., :
Plaintiff, :
v. : C.A. No. 04-956-GMS

L. AARON CHAFFINCH, et al., :
Defendants. :

CHRISTOPHER FORAKER, :
Plaintiff, :
v. : C.A. No. 04-1207-GMS

L. AARON CHAFFINCH, et al., :
Defendants. :

DECLARATION OF ROBERT C. MOSES

1. I am a Lieutenant in the Delaware State Police. I have been a police officer since 1981, and a Detective since 1986. I am the officer-in-charge of the Delaware State Police High Technology Crimes Unit.

2. I have been involved in numerous computer-related investigations and have drafted and executed search warrants pursuant to those investigations. I have extensive training in computer related investigations. I am certified by the International Association of Computer Investigative Specialists to conduct forensic examination on computers used in the commission of a crime.

3. The information contained in this declaration is based upon my own experience and expertise in the field, as well as information provided to me by other State of Delaware employees with knowledge about the issues addressed here.

4. I was asked to provide information about DSP's computer practices regarding the creation and storage of electronic documents and communications. All desktop computers owned by DSP are connected to a local area network (LAN) server. All DSP users have personal profiles, which contain settings identifying the LAN server, which contains a personal folder for each user. Based upon rules established in the personal profile, documents created by a user will be saved by default to the user's personal folder on the LAN server, unless the user specifically designates another file path. Server files are not part of the "hard drive" of each desktop computer, but rather are saved to the LAN network – specifically, saved within each user's folder. Users are advised to store documents to their personal server folders so that they can be accessed statewide.

5. DSP, like most major corporations, maintains a standard practice of maintaining a computer "image" of the basic computer settings, operating system and programs. Any new computer, problem computer or computer being re-assigned to a new user has the basic "image" re-loaded onto that computer. This has the effect of overwriting most information previously contained within the computer. This does not affect email or LAN server documents. This is done for reasons of security and efficiency due to the number of computers (approximately 925) within our organization. For example, repairing individual computers would not be as efficient as simply re-imaging it. Any computer which is no longer going to be used by DSP is "wiped" of all data.

6. The procedures described in the paragraph above have been in use at DSP since at least 1999.

7. In accordance with these procedures, shortly after Colonel Aaron Chaffinch retired in May of 2005, his computer was re-imaged and/or wiped. I did not personally perform this procedure. It would have been performed by an employee of the DSP Information Systems Support (ISS) who routinely perform these procedures. ISS re-images approximately 75 desktop and laptop computers per month.

8. Email is the primary communication medium among DSP personnel and other state and local agencies. Email is processed through mail servers at the Delaware Department of Technology and Information (DTI) and does not involve the hard drive or desktop computer.

Many documents (e.g. Word, PDF files) that are shared between users are sent via email. I requested and obtained from DTI the electronic mail account of Colonel Chaffinch, as well as Colonel MacLeish and Secretary Mitchell. This has been provided to me in a standard Microsoft Exchange format and is currently in my possession in a secure location at DSP HTCU.

9. DSP has contracted with Arch Paging to provide paging services to certain DSP employees. Arch provides pagers and maintains a website, www.arch.com, where anyone with an internet connection can connect to this webpage and send an alphanumeric page of up to 200 characters to any Arch customer that has a pager with alphanumeric capability. These messages are not stored by Arch. This information is not logged by DSP because it is only used for informal communications.

10. Blackberry provides wireless handheld email/communication to its users. All State email is sent or received through DTI's exchange mail servers. Blackberry devices are synchronized with the profile which has been created for the user on the DTI mail server. Emails sent to or from Blackberries are stored by DTI in the user's exchange mail folder in same manner as all other emails processed through the mail servers.

11. Colonel Chaffinch was assigned a Blackberry in October 2004. Colonel Chaffinch's emails obtained from DTI would include emails sent from and received by his Blackberry device.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 2-2-04


Robert C. Moses

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CORPORAL B. KURT PRICE, et al.,)
) Civil Action No.
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)
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COLONEL L. AARON CHAFFINCH, et al.,)
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Defendants.)
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SERGEANT CHRISTOPHER D. FORAKER,)
) Civil Action No.
Plaintiff,) 04-1207-GMS
)
v.)
)
COLONEL L. AARON CHAFFINCH, et al.,)
)
Defendants.)

Deposition of L. AARON CHAFFINCH pursuant to notice at the law offices of The Neuberger Firm, P.A., 2 East 7th Street, Wilmington, Delaware, beginning at 9:35 a.m. on Tuesday, August 30, 2005, before Renee A. Meyers, Registered Professional Reporter and Notary Public.

APPEARANCES:

MARTIN D. HAVERLY, ESQ.
STEPHEN J. NEUBERGER, ESQ.
THE NEUBERGER FIRM, P.A.
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Wilmington, Delaware 19801
for the Plaintiffs,

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1 APPEARANCES (Continued):
 2 EDWARD T. ELLIS, ESQ.
 3 MONTGOMERY McCACKEN WALKER & RHOADS, LLP
 4 123 South Broad Street
 5 Philadelphia, Pennsylvania 19109
 6 for the Defendants.

7 ALSO PRESENT:
 8 WAYNE J. WARREN
 9 L. AARON CHAFFINCH,
 10 the witness herein, having first been
 11 duly sworn on oath, was examined and
 12 testified as follows:

13 BY MR. NEUBERGER:
 14 Q. Colonel, my name is Steve Neuberger and I am a
 15 lawyer for Sergeant Chris Foraker and for Master
 16 Corporals Wayne Warren and Kurt Price; do you
 17 understand that?
 18 A. Yes, sir.
 19 Q. You have testified in court before, haven't
 20 you?
 21 A. Yes, sir.
 22 Q. And you have had your deposition taken before,
 23 haven't you?
 24 A. Yes, sir.
 25 Q. I am going to ask you some questions and the
 court reporter here is going to type up your answers

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1 prevent you from testifying truthfully or remembering
 2 accurately?
 3 A. No, sir.
 4 Q. If you need any breaks, if you need to go to
 5 the john, if you need to stretch out your back, if you
 6 need to do some yoga, just let me know and I will be
 7 happy to take a five-, ten-minute break?
 8 A. Yes, sir.
 9 Q. You have taken an oath to tell the truth?
 10 A. Yes, sir.
 11 Q. And you understand the significance of that
 12 oath?
 13 A. Yes, sir.
 14 Q. And you understand that today I am going to be
 15 asking you some questions arising out of the events
 16 related to two different lawsuits; do you understand
 17 that?
 18 A. Yes, sir.
 19 Q. There is the lawsuit of Foraker v. Chaffinch
 20 and MacLeish; do you understand that?
 21 A. Yes.
 22 Q. And then there is a lawsuit Price, Warren, and
 23 Foraker v. Chaffinch and MacLeish; do you understand
 24 that?

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1 to those questions; do you understand that?
 2 A. Yes, sir.
 3 Q. And we have to take turns talking. If we each
 4 talk at the same time, the court reporter, although
 5 she is very good, can't get everything down; do you
 6 understand that?
 7 A. Yes, sir.
 8 Q. And you have to verbalize your answers. For
 9 example, instead of nodding your head, say yes, or
 10 instead of shaking your head, say no.
 11 A. Yes, sir.
 12 Q. And after we are done here today, you will have
 13 an opportunity to review the transcript of your
 14 answers and correct any typographical errors that may
 15 occur; do you understand that?
 16 A. Yes, sir.
 17 Q. If I ask you a question and you don't
 18 understand that question, just ask me to rephrase it
 19 and I would be happy to rephrase it; okay?
 20 A. Yes, sir.
 21 Q. It's very important, I do not want you to
 22 guess; do you understand that?
 23 A. Yes, sir.
 24 Q. Are you taking any medications today that would

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1 A. Yes, sir.
 2 Q. What's your full name?
 3 A. Leonard Aaron Chaffinch.
 4 Q. And where were you born?
 5 A. Milford, Delaware.
 6 Q. And where were you raised?
 7 A. Bridgeville, Delaware.
 8 Q. What's your education?
 9 A. Bachelor's degree from the University of
 10 Delaware.
 11 Q. Where did you go to high school at?
 12 A. Woodbridge High School.
 13 Q. And what was your first year with the Delaware
 14 State Police?
 15 A. 1978, I started.
 16 Q. And you recently retired; correct?
 17 A. May the 5th, 2005, was my last day.
 18 Q. Now, when were you promoted to colonel?
 19 A. February the 8th, 2002.
 20 Q. When were you promoted to lieutenant colonel?
 21 A. May 30th, 2001.
 22 Q. Do you recall when you were promoted to major?
 23 A. October 15th, 1999.
 24 Q. Were you ever troop commander down at Troop 5?

2 (Pages 2 to 5)

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1 colonel of the Delaware State Police, is one of the
 2 factors that you considered whether the person you are
 3 making the decision about had been personally loyal to
 4 you as an individual?

5 **A. Well, you see, when you are a superintendent of**
6 the State Police, you make decisions about all kinds
7 of things.

8 Q. Okay.

9 **A. Everything is not personnel issues. There is**
 10 **all kinds of things that you make decisions about**
 11 **daily.**

12 **If you are talking about putting someone**
 13 **in a high position or something like that, any person**
 14 **certainly would properly lean towards somebody who has**
 15 **been loyal to them as opposed to somebody who has been**
 16 **disloyal. That's just common sense.**

17 Q. So, is that a factor that you would consider
 18 when making personnel decisions, if we can narrow that
 19 focus?

20 MR. ELLIS: Object to the form of the
 21 question.

22 THE WITNESS: That would be one part of
 23 the decision.

24 BY MR. NEUBERGER:

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1 **25th of '05, I wasn't working, so I wasn't kept**
 2 **up-to-date.**

3 Q. We will focus on the time period from April of
 4 2004 through September of 2004.

5 **A. Okay. Yes, sir.**

6 Q. Are you aware that, during that time frame, my
 7 clients were sent for fitness for duty exams?

8 **A. I am aware that they were sent, but as far as**
 9 **the time frame, I am not real, you know, I am not real**
 10 **-- I have no idea exactly when it was.**

11 Q. But at some point during -- you are aware that
 12 they were sent?

13 **A. I am aware that they were sent. I couldn't**
 14 **even tell you if it was during that time frame that**
 15 **you just enumerated.**

16 Q. Do you know why they were sent for fitness for
 17 duty exams?

18 **A. Not exactly. I don't know all the, you know,**
 19 **the details.**

20 Q. I think you indicated --

21 **A. I know that decision was made.**

22 Q. And you indicated that then Lieutenant Colonel
 23 MacLeish made that decision?

24 **A. That's right. See, the lieutenant colonel's**

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1 Q. Right. That would be --

2 **A. Depending on what you are filling -- if you are**
 3 **filling a position, depending on the -- the**
 4 **qualifications of the different ones that are -- that**
 5 **you are looking at and the experience and -- there is**
 6 **all kinds of different things that come into play.**

7 **But if everything -- everything else being equal,**
 8 **sure, personal loyalty may -- may kind of tip the**
 9 **scale, if you will.**

10 Q. Got you. Okay.

11 Now, did there come a time when you sent
 12 Chris Foraker, Wayne Warren, and Kurt Price for
 13 fitness for duty exams?

14 **A. Not me.**

15 Q. Are you saying you did not make that decision?

16 **A. That's right. The lieutenant colonel made**
 17 **those decisions.**

18 Q. Would that be --

19 **A. Tom MacLeish. Yeah. He is the colonel now.**

20 Q. Did he talk to you about that decision?

21 **A. He just told me that they are going to be sent.**

22 **But now we need probably to know what the time frame**
 23 **is because there is like five months when I wasn't**
 24 **even working. From October 27th of '04, until March**

1 **position, the range -- the training, personnel,**
 2 **discipline all comes under the deputy superintendent,**
 3 **so --**

4 Q. Did he have to run that decision by you?

5 **A. No.**

6 Q. Did he run that decision by you?

7 **A. He just let me know about it.**

8 Q. Did you have the authority to say, No, don't do
 9 that?

10 **A. Sure.**

11 Q. Did you tell him, No, don't do that?

12 **A. No, I did not. And I didn't know all the**
 13 **particulars that he knew. I wasn't -- I wouldn't do**
 14 **that without knowing what's going on.**

15 Q. Okay.

16 **A. I have no reason to believe that he wasn't**
 17 **making the right decision. If I had had a reason to**
 18 **believe he wasn't making the right decision, maybe I**
 19 **would have looked into it farther, but I have no**
 20 **reason to believe that. He was working with human**
 21 **resources and whoever else was involved in it.**

22 Q. And are you indicating that you don't know why
 23 he made that decision?

24 **A. Right. I don't know all the particulars.**

41 (Pages 158 to 161)

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1 Q. Do you know if Wayne Warren and Kurt Price
2 passed their fitness for duty exams?

3 **A. No, I don't.**

4 Q. Do you know if Chris Foraker passed his fitness
5 for duty exam?

6 **A. I am thinking I remember that he did, but I am
not 100 percent sure. I think he did.**

7 Q. Do you know that Chris Foraker was sent for a
8 second opinion on his fitness for duty exam?

10 **A. I do now.**

11 Q. Did you know it then?

12 **A. I am not sure. Another thing was the time
period.**

14 Q. So, today, the end of August, 2005, are you
15 aware of the fact that Chris Foraker was sent for
16 three fitness for duty exams?

17 **A. No.**

18 Q. Do you think that's normal to send an officer
19 for three fitness for duty exams?

20 **A. I have no reason to -- to believe it's normal
or abnormal. I don't know.**

22 Q. Have you ever been sent for three consecutive
23 fitness for duty exams?

24 **A. No. I have never been sent for one.**

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1 **on what date that was, because, like I said, I wasn't
there a lot --**

3 Q. I will represent to you that Kurt Price and
4 Wayne Warren were put on light duty on June 18th of
5 2004.

6 **A. Okay.**

7 Q. So, focus around that time --

8 **A. Thank you.**

9 Q. -- time frame.

10 **A. Yes, sir.**

11 Q. Do you know if Lieutenant Colonel MacLeish ran
12 that decision by you before --

13 **A. No. He told me that -- that that had occurred.**

14 Q. So he told you after the fact?

15 **A. Yeah.**

16 Q. He did not tell you before the fact?

17 **A. No.**

18 Q. So, when you found out about it after the fact,
19 did you say, That's the wrong decision?

20 **A. No.**

21 Q. Did you say, You made a mistake, Tom MacLeish?

22 **A. I sure didn't.**

23 Q. Did you think he had made the right decision?

24 **A. I had no reason to believe anything different**

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1 Q. Do you know why Sergeant Foraker was sent for
2 three fitness for duty exams?

3 **A. No, I do not.**

4 Q. Now, did there come a time when you put Kurt
5 Price and Wayne Warren on light duty?

6 **A. Lieutenant colonel did.**

7 Q. So, you are telling me that you did not make
8 that decision?

9 **A. That's correct.**

10 Q. Were you involved in that process at all?

11 **A. No.**

12 Q. As colonel, did Lieutenant Colonel MacLeish run
13 that decision by you?

14 **A. He may have run it by me after the fact.**

15 Q. So, you are telling me --

16 **A. I am sure he was working hand-in-hand with
human resources and Captain Yeomans.**

18 Q. So you are indicating to me that he only ran it
19 by you after the fact?

20 **A. Yes. And that -- and I am not sure of that
because it depends on when that was.**

22 Q. So, he could have run it by you before he did
23 it; you just don't remember?

24 **A. No. I am saying when this occurred, depending**

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1 **from that.**

2 Q. As the colonel of the State Police, you had the
3 authority to overrule that decision if you wanted to;
4 isn't that right?

5 **A. Sure.**

6 Q. Because you are the colonel and you can -- you
7 are the ultimate, I guess, decision maker in the State
8 Police; would that be fair to say?

9 MR. ELLIS: Object to the form of that
10 question.

11 THE WITNESS: The ultimate decision maker?

12 I have never actually heard it said that way before,
13 but --

14 BY MR. NEUBERGER:

15 Q. How would you phrase it?

16 **A. I am the superintendent of the State Police.**

17 Q. And inherent in that position, you are the --
18 you have the final say on --

19 **A. A lot of things.**

20 Q. And would whether someone goes on light duty be
21 one of those things?

22 **A. Not necessarily because the way it's set up,
the lieutenant colonel, that comes under the
lieutenant colonel's purview, just, like I said, all**

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1 discipline, all personnel issues, and all training	1 A. I saw the lieutenant colonel -- I was at that	
2 issues come under the lieutenant colonel.	2 meeting. I saw the lieutenant colonel go over to	
3 Q. Are you aware that in the spring of 2005, Kurt	3 Sergeant Foraker and talk to Sergeant Foraker, and	
4 Price and Wayne Warren were ordered to separate from	4 then I saw Sergeant Foraker get up and leave the room.	
5 the division?	5 Q. Were you --	
6 A. No, I am not.	6 A. And subsequently -- I wasn't a part of it until	
7 Q. Are you telling me that you knew nothing about	7 after the fact when the lieutenant colonel came and	
8 that?	8 told me.	
9 A. The spring -- when in the spring? Do you know?	9 Q. Was Lieutenant Colonel MacLeish acting at your	
10 Q. May 12th of 2005.	10 direction?	
11 A. I was retired.	11 A. No.	
12 Q. Did you hear about that before you retired?	12 Q. Did you tell Lieutenant Colonel MacLeish to get	
13 A. No.	13 Sergeant Foraker out of the room?	
14 Q. I think you said you retired on May 5th of	14 A. No, I did not.	
15 2005?	15 Q. What did Lieutenant Colonel MacLeish say to you	
16 A. Mm-hmm.	16 when he came back after Sergeant Foraker left the	
17 Q. So, was that decision run by you prior to your	17 room?	
18 retirement?	18 A. Well, I think I probably asked him, Why is	
19 A. No.	19 Sergeant Foraker here?, because we didn't have	
20 Q. Did then Lieutenant Colonel MacLeish talk to	20 sergeants come to the commanders meeting, and he said	
21 you about it prior to your retirement?	21 he took care of it or whatever. But I hadn't had any	
22 A. No.	22 conversation prior to the lieutenant colonel going	
23 Q. I believe you were back on full duty in the end	23 over and talking to him.	
24 of March?	24 Q. Are you aware that Sergeant Foraker's job	
Page 167		Page 169
1 A. March 24th.	1 responsibilities at the FTU have been decreased since	
2 Q. Of 2005?	2 he was reinstated there in December of 2003?	
3 A. Mm-hmm.	3 MR. ELLIS: Objection to the form of the	
4 Q. And then you were on full duty until May 5th of	4 question.	
5 2005?	5 THE WITNESS: No, I am not aware, and I	
6 A. Yes.	6 don't believe that they have.	
7 Q. So, is it your testimony that during that time	7 BY MR. NEUBERGER:	
8 period, Lieutenant Colonel MacLeish never told you	8 Q. Is that something which you think you would	
9 about his order to Kurt Price and Wayne Warren to	9 normally be aware of if something like that were to	
10 separate from the division?	10 occur?	
11 A. I don't remember him telling me that, and	11 A. Yes.	
12 during those six weeks or so that I was back, I was	12 Q. And you are indicating that you did not order	
13 out of state two different weeks.	13 that and that did not happen, period?	
14 Q. So, you are telling me that you had no	14 A. I am saying that I was not aware of the fact	
15 involvement in that process?	15 that they have been diminished. No, I did not order	
16 A. That's correct.	16 it. And if they were diminished, I am not aware of	
17 Q. Now, Colonel, did you ever become aware of	17 it.	
18 Sergeant Foraker being thrown out of the commanders	18 Q. So, you are indicating that it's possible that	
19 and section chief meetings by then Lieutenant Colonel	19 it could have happened but you just have no personal	
20 MacLeish?	20 knowledge one way or the other?	
21 A. Could you restate the first part of that?	21 A. I have no knowledge one way or the other. I	
22 Q. Did you ever find out that Sergeant Foraker was	22 don't believe that it did, but I have no knowledge of	
23 thrown out of a commanders and section chiefs meeting	23 it one way or the other.	
24 by then Lieutenant Colonel MacLeish?	24 Q. Are you aware that beginning in December of	

43 (Pages 166 to 169)